THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.18121 of 2004

ORDER: *(per the Hon'ble Sri Justice M. Satyanarayana Murthy)*

The petitioner, who is carrying on business in purchase and sale of soaps, detergents etc., in Sullurpet, Nellore District represented by its Proprietor K.Lakka Raju filed this petition to declare the action of the respondent in obtaining a consent statement by threat and coercion and collecting tax and penalty through impugned order dated 27.09.2004, as illegal, arbitrary and without authority of law and violative of principles of natural justice and set aside the same while ordering refund of entire amount collected i.e., Rs.45,366/- towards tax and Rs.2,26,830/- towards penalty.

2. Petitioner is a registered dealer under APGST & CST Acts and is an assessee on the rolls of Commercial Tax Officer, Gudur, Nellore District. The petitioner is carrying on business in the name and style of "M/s. South India Agencies", regularly filing its monthly returns. During the course of its business, the petitioner purchased soaps and detergents of the brand "Oorvasi" from M/s. Saveetha Traders, No.4 Sadarapet Main road, Thondamanatham, Villianur Commune, Pondicherry, and in-turn effecting first sales in the State of Andhra Pradesh. During the course of its business, effecting first sale of soaps and washing powder to M/s. Crystal Agencies, D.No.28-20-15,- Johny street, Arundelpet, Vijayawada on 19.09.2004 and the said goods were consigned by lorry bearing No.AP 7U 8168 and the consignment was accompanied by all documents, viz., Way Bill, Invoice-cum-Delivery challan etc.

3. During the course of vehicular check on 21.09.2004, the respondent detained lorry bearing No.AP 7U 8168, which was carrying soaps and washing powder, on suspicion, found certain irregularities. The respondent has served detention notice and seizure notice on the lorry driver. In pursuance of the information passed on to the consignee i.e., M/s Crystal Agencies by its driver, one Rama Koteshwara Rao, who approached the respondent for release of goods, but the respondent declined to release the goods on the ground that certain technical defects are found in the Way Bill copies. Immediately, the consignee contacted the petitioner and informed that the petitioner on his own shall sort out the problem with the department and handover the goods to the consignee i.e., M/s. Crystal Agencies, Vijayawada. In view of the information passed by Rama Koteshwara Rao, the petitioner approached the respondent on 27.09.2004, furnished relevant documents while explaining that he had no intention to evade payment of tax or by the M/s. Crystal Agencies. The respondent has verified the Way Bills and found that the Way Bills are not checked at Commercial Tax Check Post, Thada, Nellore District. But the check post at Tahada was not functioning, however since the vehicle passed through B.V. Palem, Integrated Check Post in Nellore district and the documents were checked. Therefore, the detention and seizure of goods is illegal. However, the respondent by order dated 27.09.2004, seized the goods in question, without notice to the petitioner. It was also proposed to confiscate the goods by granting 7 days time to the petitioner for filing its objections for the proposed confiscation of goods. Without allowing even one day time, the respondent issued another proceedings dated 27.09.2004 proposing to levy penalty on the ground that the petitioner gave consent letter for payment of

tax of Rs.45,366/-. The respondent passed another order dated 27.09.2004, observing that the petitioner agreed to pay penalty, and issued another proceedings dated 27.09.2004 demanding penalty amount of Rs.2,26,830/- exercising power under Section 29(6A) of the APGST Act by threat that if amount is not paid it will be recovered by invoking powers under the A.P Revenue Recovery Act. Thus, the collection of tax and penalty under threat and coercion by passing orders dated 27.09.2004 is illegal.

4. It is specifically contended that the respondent on enquiry with Commercial Tax Officer, Nellore concluded that the petitioner indulging in evasion of sales tax, which is not based on any material. Therefore, collection of tax and penalty by threat and coercion is violative of principles of natural justice and the action of the respondent is illegal. It is further contended that Section 29 (2) authorizes the respondent to verify the documents accompanied the goods in a vehicle, as per Section 29 sub-clause 3 (b) (i), if the authority is found that the goods are not properly accounted for or the tax was not paid, the respondent can demand to furnish security for an amount equal to 5 times of tax payable. Once the tax is paid and security is furnished, the respondent has to release the goods. Instead of following 29 (2) and 29 sub-clause 3 (b) (i), the respondent insisted payment of tax and penalty under Section 29 (6A) of the Act, as such the action of the respondent is illegal, violative of principles of natural justice prayed to set aside the letter obtained by coercion and threat and direct refund of tax and penalty collected illegally.

5. The respondent filed counter denying material allegations while contending that on 21.09.2004, during the course of vehicular check, as per the authorization issued by the Deputy Commissioner (CT) No.II Division, Vijayawada, the respondent

intercepted one lorry bearing No.AP 7U 8168 near Kanaka Durgamma Varadhi, in which, washing soaps and washing powder was being transported. Sri Dori Swamy Naga Raju, driver of lorry, on demand, furnished Invoice-cum-Delivery Note No.010, dated 19.09.2004 for Rs.3,77,809.60 ps. issued by M/s. South India Agencies, Sullurpet mentioning the consignee name as M/s.Crystal Agencies, D.No.28-20-15, Johny street, Arundelpet, Vijayawada. The Registration number of the consignee is VJ2/03/02/2392. He has also produced Way Bill No.A5398746, dated 19.09.2004 issued by M/s. South India Agencies, Sullurpet mentioning the consignee name as M/s. Crystal Agencies, D.No.28-20-15, Johny street, Arundelpet, Vijayawada.

6. It is contended that the lorry No.TN 20 W 7205 was mentioned in the way bill and the same was struck off by mentioning lorry No.AP 7U 8168. From this, it is clear that the goods were consigned from Tamilnadu State. In column No.5 of the way bill, the name and address of consignor was noted as M/s Savitha Traders, No.4 Sedarpet Main road, Pondicherry-2. On the basis of above irregularities, the respondent concluded that the goods were consigned from Pondicherry to Vijayawada by M/s. Savitha Traders, Pondicherry to M/s Crystal Agencies, Vijayawada through M/s South India Agencies, Sullurpet. However, the way bills are not produced for check at Thada border check post and no sticker in support of having been checked at the border check post was affixed. On the basis of above irregularities, bonafides of the goods under transport to evade payment of tax by the consignor to the consignee was suspected.

7. It is further contended that the driver has also failed to produce vehicular slip, however disclosed that the goods were loaded into his lorry bearing No.AP 7U 8168 at Sullurpet from

another lorry bearing No.TN 20 W 7205. As such, to prove evasion of tax, exercising power vested on the respondent by Section 29 (3) (b)(ii) of the APGST Act, detained the lorry No.AP 7U 8168 along with the goods under transport, for enquiry. It is further contended that to confirm the bonafides of the way bills and the bills issued by the consignor at Sullurpet i.e., M/s. South India Agencies, and the matter was referred to the Commercial Tax Officer, Nellore Division and in-turn send the Photostat copy of third copy of the way bill available with the consignor to the office of the respondent for verification. On verification of the entries recorded in the third copy of the way bill with reference to the original and duplicate copies that are accompanied by the goods, certain discrepancies were noticed. It was found by the respondent that the copies were not written at a time before issue of way bills. Actually the original and duplicate copies were written by using the carbon, whereas the third copy available with the consignor was filled up subsequently. Based on the above discrepancies, the respondent detained the goods. On further enquiry, the respondent came to know that “Oorvasi” brand detergent soaps and detergent powder was being transported directly to M/s. Crystal Agencies, Vijayawada to evade payment of sales tax.

8. The respondent served notice of detention on the driver of lorry, who in-turn intimated the same to Sri G.Rama Koteshwara Rao, Proprietor of M/s. Crystal Agencies i.e., consignee dealer has appeared before the Commercial Tax Officer, Governorpet, Vijayawada on 24.09.2004 and gave a consent letter for payment of tax and penalty, equal to 5 times of the tax due on the value of the goods. But he did not turn up since the invoice was issued by M/s. South India Agencies, Sullurpet and when asked the

consignee G. Ramakoteshwara Rao regarding the mode of payment of tax and penalty for the goods transported, he refused to reveal the same. Thus, the dealer M/s. Crystal Agencies, Vijayawada has purchased the goods from Pondicherry and obtained the invoice-cum-way bills from M/s. South India Agencies, Sullurpet, to make believe that he has purchased the goods from the said dealer. Sine consignee-dealer i.e., M/s. Crystal Agencies has not keep up its promise and no representation was made by the consignor till 27.09.2004, even after lapse of 6 days, the respondent had seized and confiscated the “Oorvasi” brand detergent soaps and washing powder worth of Rs.3,77,809.60 ps., noticing the device of the dealer in evasion of tax vide proceedings dated 27.09.2004 by invoking the provisions of Section 29(6B) read with Section 29(2) of APGST Act and the said proceedings were served on the lorry driver and consignee dealer M/s. Crystal Agencies. In response to the confiscation order, the consignor appeared before the respondent and gave consent letter dated 27.09.2004 agreeing to pay tax and penalty of Rs.45,366/- and Rs.2,26,830/- respectively, accordingly, the respondent collected tax and penalty by issuing proceedings for release of goods.

9. It is further contended that specific contention of the petitioner that check post at Thada was closed is false and checking of documents at B.V Palem Integrated check post is also false, as the documents does not bear official seals or any computerized sticker in support of having checked documents. Thus, the action of respondent is in accordance with law and alleged obtaining consent letter by threat or coercion is false and prayed to dismiss the writ petition.

10. Learned counsel for petitioner Sri V.Bhaskar Reddy

contended that in the order itself, a reference was made about consent letter dated 27.09.2004 issued by the petitioner for payment of tax and penalty. Therefore, the non-production of same is not a ground to dismiss the petition. However, the letter was obtained by coercion or threat and issued proceedings for collection of tax and penalty, on the same day, itself sufficient to conclude that the respondent by coercion and threat obtained the consent letter, collected tax and penalty illegally, in contravention of provisions of A.P.G.S.T. Act. Therefore, prayed to allow the writ petition declaring that the consent letter dated 27.09.2004 as illegal, arbitrary and order refund of tax and penalty illegally collected from the respondent.

11. *Per contra*, learned Special Standing Counsel for Commercial Taxes, contended that the petitioner voluntarily gave a letter dated 27.09.2004 paid tax and penalty and got the goods released. The petitioner did not disclose the particulars of coercion or threat, and in the absence of particulars, it is difficult to meet the allegations made against the respondent-Commercial Tax Officer by filing any detailed counter. Even otherwise, when malafides are attributed to the respondent, the respondent in person has to be impleaded as *EO NOMINE* to the writ petition and in the absence of impleading the respondent in person to the petition, the petition cannot be allowed. Finally, it is contended that third copy of the way bill was prepared conveniently. Cumulative effect of the discrepancies in the documents produced by the driver of lorry clearly established the intention of dealer M/s. Crystal Agencies to evade payment of tax directly purchasing washing powder and soaps from M/s Savitha Traders, Pondicherry and that the petitioner being consignor is no way concerned with the payment of tax and penalty, but he himself voluntarily came

and gave consent letter for payment of tax and penalty, accordingly, paid tax and penalty, got released the goods. Therefore, there is absolutely no proof to substantiate the allegations made in the writ petition against the respondent and prayed to dismiss the same.

12. Considering rival contentions, perusing the material available on record, the point that arises for consideration is:

1). Whether the respondent obtained consent letter dated 27.09.2004 by coercion or threat, and, whether the consent letter be declared as illegal and arbitrary, if so, whether the collection of tax and penalty under order dated 27.09.2004 is illegal and liable to be refunded?

POINT :

13. It is the case of the petitioner that the respondent obtained consent letter dated 27.09.2004 from the petitioner by coercion or threat, collected tax and penalty under the impugned order dated 27.09.2004, thereby it is illegal. However, the respondent while denying the said allegation contended that the petitioner voluntarily gave a letter of consent dated 27.09.2004, voluntarily paid tax and penalty. In fact, the petitioner set up a special plea of coercion or threat in obtaining letter dated 27.09.2004. Issue of letter dated 27.09.2004 by the petitioner is not in dispute. But whether it was obtained by coercion or threat is the question, to be determined by the court in the present writ petition.

14. To sustain the plea of coercion or threat in obtaining letter dated 27.09.2004, it is the duty of the petitioner to state the particulars of coercion or threat that exerted on the petitioner by the respondent in view of the order VI Rule 4 CPC. But no such details or particulars of coercion are narrated as to how the

respondent threatened the petitioner in obtaining letter dated 27.09.2004. It is a settled law that the pleading in a civil matter is the basis for claim and the same rule is applicable even to the writ petitions.

15. According to **Order VI Rule 4 CPC**, *in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading*. Thus, **Order VI Rule 4 CPC** is mandatory, which obligates the party who set up a special plea of coercion or threat to state the particulars with details of dates etc., The same principle is applicable even for writ petitions also.

16. When special plea of coercion, mistake, fraud etc., is raised in the plaint or writ petition, such party is under obligation to disclose all facts with full particulars in ***Kosaraju Venkata Subbayya v. The Government of Andhra Pradesh***[1] placing reliance on ***Wallingford vs. Mutual Society (1880) 5 AC page 685***, ***Bharat Dharma Syndicate v. Harish Chandra*** (MANU/PR/0049/1937), ***Union of India vs. P K More*** (MANU/SC/0396/1961): (1961) IILLJ 427 SC. *This authority seems to be quite opposite to the instant case, for Mr. Narasaraju's contention is that the counter affidavit of the respondents does not give sufficient particulars and details to clear themselves of the imputation of improper conduct or of being influenced by extraneous considerations, made in the affidavit in support of the writ petitions. But the allegations in the petitioners' affidavits are nothing more than bald, vague and broad. Such allegations cannot therefore evoke specific and detailed answers in the counter affidavit. On the ground of lack of sufficient particularity in the counter affidavit of the respondents, the petitioners cannot therefore succeed. On the other hand, the correct view to take in a case like the present is not to attach importance to the bald allegations of improper conduct made in the petitioners' affidavit. What is more, the petitioners have not been able to say who precisely in the Government was actuated by extraneous considerations or outside*

influence or the like. Making allegations in a broad and bald way against Government generally is certainly not an effective method of attack in a court. The Government is composed of the Ministers, Secretaries, Head of Departments etc. In these writ petitions, the Head of the Department, namely the Director of Public Instruction is the second respondent. The State government is the first respondent. The orders of cancellation of the prescription of the Text Books of the petitioners could have been the result of the deliberations of the Ministers in charge, the Chief Minister, the Secretary to the Education Department, director of Public Instructions and perhaps some others also. In such a case, to make general and broad allegations of lack of bona fides or of being influenced by extraneous considerations or other reasons is not sufficient. Something more specific, more direct and more precise is a necessary to sustain a plea of this nature. If it were otherwise, it will be very easy for any person to make a broad and bald claim that a particular action of the Government is the result of extraneous and improper considerations and if on such vague and broad allegations devoid of any detail and which do not even specify the individual who was subjected to the alleged vice, the Government are to enter on their defence and affirmatively establish that what they did was perfectly bona fide and unconnected with any improper motives or extraneous considerations it will indeed the putting the Government in a most difficult and least enviable position. I do not think the law has gone to this extreme extent of requiring the government in answer to a bald and vague allegation of mala fides or something amounting to it, to affirmatively establish on detailed facts and figures and other elaborate data that they and free from any vestige of blame. Such lopsided onus, no person can reasonably be called upon to discharge from this point of view, therefore, I do not think the bald and bare imputation of improper conduct or extraneous consideration should be permitted to assume any importance against the respondents."

In ***LAKHI PRASAD AGARWAL v. NATHMAL DOKANIA***[2]***,*** the Apex Court held that in a writ petition filed to set aside election, particulars of allegation of fraud is made without disclosing the details of fraud, the petition is not maintainable. Therefore, in view of the special plea of coercion or threat set up in the writ petition without disclosing the particulars with dates and other details, those allegations cannot be taken note of by the

Court in view of the judgment of our High Court and Apex Court referred above. Here, the petitioner did not disclose the details as required under Order VI Rule 4 CPC enabling the respondent to rebut the same by filing a detailed affidavit.

17. Time and again, the courts consistently held that when a special plea of coercion or threat etc., particulars are to be disclosed as required under Order VI Rule 4 CPC.

18. The word "***coercion***" is committing or threatening to commit, any act forbidden by Indian Penal Code (45 of 1860) (IPC), or the unlawful detaining or threatening to detain, any property, to the prejudice to any person whatever, that the intention of causing any person to enter into an agreement.

19. Thus to establish coercion, it is for the petitioner to prove the committing any act forbidden by IPC or detention or threatening to detain any property to cause prejudice to any person. Here, the lorry along with the goods was already detained almost a week before passing the order under challenge, seized and confiscation order was also passed. In those circumstances, coercing the petitioner by the respondent to issue letter dated 27.09.2004 does not arise.

20. In the present case, the petitioner did not disclose the particulars of coercion enabling the respondent to file reply rebutting those allegations. If it is an allegation made in a plaint, the defendant can file a written statement and adduce evidence in support of it. But in the writ petitions, the only opportunity to the respondent is to file counter affidavit rebutting the allegations. Therefore, the obligation of the petitioner to disclose the particulars of coercion or threat etc., is heavier than in civil suits and failure to disclose the particulars disbelieve the courts to take note of those allegations. On this ground alone, the writ petition

has to be thrown out.

21. The material on record at best disclosed that on the day when the petitioner approached the respondent, all the orders were passed on the same day. Merely because, the orders were passed on the same day when the letter dated 27.09.2004 was issued by the petitioner. It is difficult to infer that the letter was obtained by coercion in the absence of any details.

22. Learned counsel for the petitioner while contending that passing of an order, order of detention etc., is illegal. In support of his contention, he placed reliance on a Full Bench judgment of this Court reported in ***AMBICA LAMP HOUSE vs. COMMERCIAL TAX OFFICER (Int)-I ENFORCEMENT AND ANOTHER***[3], wherein a Full Bench of this Court held that issue of notice by Vigilance/Intelligence Wing of the sale tax department, collection of tax etc., on one day is illegal and directed to issue necessary circular to the authorities by the Commissioner of Commercial Tax Department in view of the guidelines 1 to 9 laid down by this Court.

23. In view of the facts of the above judgment, Commercial Tax Officer-the respondent detained the vehicle, served notice and collected tax and penalty on the same day without passing assessment order. But in the present case, the goods were detained on 21.09.2004 and the order of detention was passed after satisfying that the goods not accompanying necessary documents, served notice on the driver of the lorry and latter consignee-G Ramakoteshwara Rao, Proprietor of M/s. Crystal Agencies, Vijayawada approached the respondent and gave a letter expressing his willingness to pay tax and penalty on 24.09.2004, but he did not keep up his promise. In fact, it is the duty of the consignee to pay tax and value of the goods, but he did

not pay. Curiously, the petitioner approached the respondent on 27.09.2004 though he was not under obligation to pay tax, gave consent letter dated 27.09.2004, and thereupon, passed separate order of assessment and penalty levying tax of Rs.45,366/- and penalty of Rs.2,26,830/- on the value of the goods. Since the copies of original, duplicate and triplicate were not written at the same time, it created any amount of doubt about transportation of the goods from Sullurpet to Vijayawada by the consignor to the consignee under valid way bills and sale invoices. More curiously, on the way bills, there were certain corrections scoring the name M/s. South India Agencies in the column meant for address of consignor, since the address mentioned in the column No.5 of way bill was M/s. Saveetha Traders, Sadarpet, Main road, Pondicherry-2 and the same was scored off, mentioning the name of M/s. South India Agencies, Sullurpret, the correction was not initiated by any competent person, certifying the authority of correction. Adding to the discrepancies, sticking off lorry No. TN 20W 7205 and mentioning AP 7U 8168 is another strong circumstance to conclude that the goods were being transported from M/s. Saveetha Traders, Pondicherry to M/s. Crystal Agencies, Vijayawada directly creating the petitioner as M/s. South India Agencies as intermediary to evade payment of tax. Therefore, the principle laid down in the above decision has no application to the present facts of the case, however in later judgments of this Court reported in ***Sri Venkateswara Animal Health Products, Vijayalakshmipuram, represented by its proprietor, P.Ram Prasad, S/o P.L. Narayana Rao vs. The Deputy Commercial Tax Officer***[4], a Division Bench of this Court did not accepting the principle, based on the facts. The facts of the above judgment are identical to the present facts of the case. Therefore, the principle

laid down in ***Ambica Lamp***'s case has no application to the present facts of the case.

24. Hence, the contention of the petitioner that consent letter dated 27.09.2004 was obtained by coercion, threat etc., is not acceptable for the following reasons :

a) the document accompanied with the good *prima facie* shows that the goods were being transported directly from M/s. Savitha Traders to M/s. Crystal Agencies, conveniently altered coloumns number 5 mentioning the name of M/s. South India Agencies-petitioner;

b) Similarly the lorry number was conveniently changed by mentioning lorry No.AP 7U 8168 instead of lorry No.TN 20W 7205;

c) The respondent issued detention notice on the date of detention itself i.e., on 21.09.2004, but passed the orders on 27.09.2004 only when the petitioner gave consent letter for payment of tax and penalty;

d) The petitioner did not disclose the particulars of coercion or threat, to take note of the said contentions by this Court so as to enable the respondent to rebut the same by filing counter affidavit;

e) The discrepancy in the original, duplicate and triplicate of way bill shows that a third copy was conveniently written, subsequent to filling up columns of original and duplicate copy of way bill by making necessary alterations.

25. Thus, the above circumstances are suffice to conclude that the consignee directly transported the goods from M/s. Savitha Traders, Pondicherry to M/s. Crystal Agencies, Vijayawada creating the petitioner as dealer at Sullurpet to evade payment of tax. Thus, the conduct of the consignor and

consignee-M/s. Crystal Agencies at Vijayawada is doubtful, lacks bonafides, therefore, this Court cannot exercise its jurisdiction under Article 226 of Constitution of India in favour of the petitioner, who is lacking bonafides in filing writ petition.

26. One of the major contentions of the respondent is that when malafides attributed in collection of tax and penalty, passing orders of assessment and penalty dated 27.09.2004, the Officer is to be impleaded as *EO NOMINE* to the writ petition, since the allegation of coercion will have serious consequences attracting criminal liability, in the absence of impleading the respondent in his personal capacity as *EO NOMINE*, the allegation of coercion cannot be taken note of.

27. In a decision of Supreme Court reported in ***State of Bihar and another vs. P.P.Sharma, IAS and another***[5]**,** the Apex Court in similar circumstances of attributing malafides held in **para-52, 53 and 56,** as follows:

"The action taken must, therefore, be proved to have been made malafide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand."

"Public administration cannot be carried on in a spirit of judicial detachment. There is a very wide range of discretionary administrative acts not importing an implied duty to act judicially though the act must be done in good faith to which legal protection will be accorded. But the administrative act dehors judicial flavour does not entail compliance with the rule against interest and likelihood of bias. It is implicit that a complainant when he lodges a report to the Station House Officer accusing a person of commission of an offence, often may be a person aggrieved, but rarely a propone publico. Therefore, inherent animosity is licit and by itself is not tended to cloud the veracity of the accusation suspected to have been committed, provided

it is based on factual foundation." and

Supreme Court further held that "*it is settled law that the person against whom mala fides or bias was imputed should be impleaded economize as a party respondent to the proceedings and give an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of principles of natural justice as it amounts to condemning a person without an opportunity."*

28. In the present case, admittedly the officer against whom malafides are attributed alleging that he has obtained consent letter by coercion or threat from the petitioner dated 27.09.2004, was not impleaded. Therefore, without affording any opportunity to the officer, impleading in his individual capacity as *EO NOMINE*, such allegations cannot be enquired into, since a serious allegation of coercion is made against the officer, who passed the order. If any finding is recorded in his absence and without affording any opportunity to meet the allegations, it will have serious consequence of criminal liability, and such enquiry is violative of principles of natural justice. Therefore, in his absence, the allegation or attribution made against the officer, who passed the impugned order, cannot be looked into. On this ground alone, the letter obtained by the respondent from the petitioner dated 27.09.2004 cannot be declared as null and void and consequential collection of tax and penalty cannot be ordered to be refunded till the assessment and penalty orders are set aside on any of the grounds, which vitiates such order.

29. The petitioner did not seek the relief of setting aside the assessment order and penalty order dated 27.09.2004, but sought the relief declaration that the consent letter dated 27.09.2004 to pay tax and penalty issued by the petitioner as null and void. Even the order of confiscation dated 27.09.2004 was addressed to

M/s. Crystal Agencies and Dori Swamy Naga Raju, the lorry driver, but letter to M/s. South India Agencies, the petitioner and M/s. Savitha Traders was marked, similarly, a penalty show-cause notice was addressed to Sri K Lakka Raju and copy was marked to M/s. Crystal Agencies, but the demand was issued to M/s. South India Agencies-Petitioner, as he came forward to pay tax and penalty by letter dated 27.09.2004. Therefore, we find no illegality in collection of tax and penalty by order dated 27.09.2004.

30. Section 29 (6A) of APGST Act enables the authorities to collect tax payable on the goods and impose five times of the tax as penalty, after giving reasonable opportunity, if the goods are being carried in the vehicle are not accounted for in the documents.

31. Section 29 (6B) enables the authorities to confiscate the goods where such goods are being transported without any documents or with fictitious documents. Here, the goods were being carried on with fictitious documents, directly transporting from M/s Savitha Traders, Pondicherry to M/s Crystal Agencies, Vijayawada creating an intermediary M/s South India Agencies, without effecting any sale in its favour legally but by making necessary alternation in the documents and crossed border check post without checking them, the goods were being carried on in the vehicle with fictitious documents. Hence, the order passed by the respondent cannot be found fault, as the respondent acted clearly within his authority.

32. As discussed above, the petitioner failed to establish that the letter dated 27.09.2004 was obtained by the respondent by coercion or threat and failed to disclose the particulars of coercion or threat as required under law and he failed to implead the officer, who collected tax and penalty by passing assessment order and

penalty order dated 27.09.2004 and that the petitioner approached this Court without bonafides and sought for discretion any relief. But we are unable to exercise the discretion in favour of the petitioner, as the petitioners claim is without bonafides, which we pointed out in the earlier paras in filing writ petition. In these circumstances, we have no option except dismiss the writ petition. The point is answered, accordingly, against the petitioner and in favour of the respondent.

33. In the result, this Writ Petition is dismissed. Pending miscellaneous petitions in this petition, if any, shall stand dismissed in consequence. No order as to costs.

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JUSTICE RAMESH RANGANATHAN.

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JUSTICE M. SATYANARAYANA MURTHY.

Date: 21-04-2016
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[1] AIR 1965 AP 425
[2] AIR 1969 SC 583
[3] 2005 (2) ALD 704
[4] (2012) 54 SPSTJ 75
[5] AIR 1991 SC 1260